

Comptroller of the Currency, Treasury

§ 150.100

holding title to real property. This list is illustrative and not comprehensive. Other activities may also be “ancillary activities” for purposes of this definition.

Affiliate has the same meaning as in 12 U.S.C. 221a(b). For purposes of this part, substitute the term “Federal savings association” for the term “member bank” whenever it appears in 12 U.S.C. 221a(b).

Applicable law means the law of a state or other jurisdiction governing your fiduciary relationships, any Federal law governing those relationships, the terms of the instrument governing a fiduciary relationship, and any court order pertaining to the relationship.

Fiduciary activities include accepting a fiduciary appointment, executing fiduciary-related documents, providing investment advice for a fee regarding fiduciary assets, or making discre-

tionary decisions regarding investment or distribution of assets.

Fiduciary officers and employees means the officers and employees of a Federal savings association to whom the board of directors or its designee has assigned functions involving the exercise of the association’s fiduciary powers.

Subpart A—Obtaining Fiduciary Powers

§ 150.70 Must I obtain OCC approval or file a notice before I exercise fiduciary powers?

You should refer to the following chart to determine if you must obtain OCC approval or file a notice with the OCC before you exercise fiduciary powers. This chart does not apply to activities that are exempt under subpart E of this part.

LIF YOU WILL CONDUCT . . .

If you will conduct . . .	Then . . .
(a) Fiduciary activities for the first time and the OCC has not previously approved an application that you submitted under this part.	You must obtain prior approval from the OCC under §§ 150.80 through 150.120 before you conduct the activities
(b) Fiduciary activities that are materially different from the activities that the OCC has previously approved for you, including fiduciary activities that the OCC has previously approved for you that you have not exercised for at least five years.	You must obtain prior approval from the OCC under §§ 150.80 through 150.120 before you conduct the activities
(c) Fiduciary activities that are not materially different from the activities that the OCC has previously approved for you.	You must file a written notice described at § 150.125 if you commence the activities in a new state. You do not need to file a written notice if you commence the activities at a new location in a state where you already conduct these activities.
(d) Activities that are ancillary to your fiduciary business	You do not have to obtain prior OCC approval or file a notice with the OCC.

§ 150.80 How do I obtain OCC approval?

You must file an application under part 116, subparts A and E of this chapter.

§ 150.90 What information must I include in my application?

You must describe the fiduciary powers that you or your affiliate will exercise. You must also include information necessary to enable the OCC to make the determinations described in § 150.100.

§ 150.100 What factors may the OCC consider in its review of my application?

The OCC may consider the following factors when reviewing your application:

- Your financial condition.
- Your capital and whether that capital is sufficient under the circumstances.
- Your overall performance.
- The fiduciary powers you propose to exercise.
- Your proposed supervision of those powers.
- The availability of legal counsel.
- The needs of the community to be served.

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(h) Any other facts or circumstances that the OCC considers proper.

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§ 150.120 What action will the OCC take on my application?

The OCC may approve or deny your application. If your application is approved, the OCC may impose conditions to ensure that the requirements of this part are met.

§ 150.125 How do I file the notice under § 150.70(c)?

(a) If you are required to file a notice under § 150.70(c), within ten days after you commence the fiduciary activities in a new state, you must file a written notice that identifies each new state in which you conduct or will conduct fiduciary activities, describe the fiduciary activities that you conduct or will conduct in each new state, and provide sufficient information supporting a conclusion that the activities are permissible in the state.

(b) You must file the notice with the appropriate OCC licensing office.

Subpart B—Exercising Fiduciary Powers

§ 150.130 How may I conduct multi-state operations?

(a) *Conducting fiduciary activities in more than one state.* You may conduct fiduciary activities in any state, subject to the application and notice requirements in subpart A of this part.

(b) *Serving customers in more than one state.* When you conduct fiduciary activities in a state:

(1) You may market your fiduciary services to, and act as a fiduciary for, customers located in any state, may act as a fiduciary for relationships that include property located in other states, and may act as a testamentary trustee for a testator located in other states.

(2) You may establish or utilize an office in any state to perform activities that are ancillary to your fiduciary business.

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§ 150.135 How do I determine which state's laws apply to my operations?

(a) The state laws that apply to you by virtue of 12 U.S.C. 1464(n) are the laws of the states in which you conduct fiduciary activities. For each individual state, you may conduct fiduciary activities in the capacity of trustee, executor, administrator, guardian, or in any other fiduciary capacity the state permits for its state banks, trust companies, or other corporations that compete with Federal savings associations in the state.

(b) For each fiduciary relationship, the state referred to in 12 U.S.C. 1464(n) is the state in which you conduct fiduciary activities for that relationship.

§ 150.136 To what extent do state laws apply to my fiduciary operations?

(a) *Application of state law.* To enhance safety and soundness and to enable Federal savings associations to conduct their fiduciary activities in accordance with the best practices of thrift institutions in the United States (by efficiently delivering fiduciary services to the public free from undue regulatory duplication and burden), the OCC intends to give Federal savings associations maximum flexibility to exercise their fiduciary powers in accordance with a uniform scheme of Federal regulation. Accordingly, Federal savings associations may exercise fiduciary powers as authorized under Federal law, including this part, without regard to state laws that purport to regulate or otherwise affect their fiduciary activities, except to the extent provided in 12 U.S.C. 1464(n) (state laws regarding scope of fiduciary powers, access to examination reports regarding trust activities, deposits of securities, oaths and affidavits, and capital) or in paragraph (c) of this section. For purposes of this section, “state law” includes any state statute, regulation, ruling, order, or judicial decision.

(b) *Illustrative examples.* Examples of state laws that are preempted by the HOLA and this section include those regarding:

- (1) Registration and licensing;
- (2) Recordkeeping;
- (3) Advertising and marketing;